Natives and American Indians in particular, the bill also mandates partnerships between district courts and Tribes and Tribal organizations.

Since its enactment, the POWER Act has brought together dozens of service organizations and tens of thousands of lawyers, all with the aim of combating our skyrocketing rates of violence and intimidation endemic across many parts of our country.

As one of my first legislative actions in Congress, I am proud to introduce the POWER 2.0 Act. This bill removes the sunset on the POWER Act and will ensure more victims have the ability to protect themselves from further violence and intimidation.

I am both grateful and filled with anticipation to see this body act so uniformly in favor of this bill, S. 3115, today.

Mr. TIFFANY. Mr. Speaker, I urge my colleagues to support this bill, and I yield back the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself the balance of my time for closing.

Mr. Speaker, there are an untold number of victims of domestic and sexual violence in this country, including young children, who are without legal recourse to escape their abusers, to protect themselves and their families, and to obtain the services they need to rebuild their lives.

The POWER Act has started the hard work of incentivizing and encouraging thousands of lawyers to provide pro bono legal services to the victims and survivors that are most in need. But we need more attorneys to join the cause.

By removing the sunset date from the POWER Act, S. 3115 will allow us to continue and expand the critical programs we created in 2018, while ensuring that there is no gap in access to services for those who need them.

Mr. Speaker, I urge all of my colleagues to join me in support of this crucial legislation, and I yield back the balance of my time.

□ 1600

The SPEAKER pro tempore (Mr. SCHNEIDER). The question is on the motion offered by the gentleman from New York (Mr. NADLER) that the House suspend the rules and pass the bill, S. 3115.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ROSENDALE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

TERRY TECHNICAL CORRECTION ACT

Mr. NADLER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5455) to amend the First Step Act of 2018 to permit defendants convicted of certain offenses to be eligible for reduced sentences, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5455

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Terry Technical Correction Act''.

SEC. 2. APPLICATION OF FAIR SENTENCING ACT OF 2010.

Section 404 of the First Step Act of 2018 (21 U.S.C. 841 note) is amended—

(1) in subsection (a)—

(A) by striking '' 'covered offense' means'' and inserting the following:

'' 'covered offense'—

''(1) means'';

(B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(2) includes a violation, involving cocaine base, of—

''(A) section 3113 of title 5, United States Code;

''(B) section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(C));

''(C) section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a));

''(D) section 406 of the Controlled Substances Act (21 U.S.C. 846);

''(E) section 408 of the Controlled Substances Act (21 U.S.C. 848);

''(F) subsection (b) or (c) of section 409 of the Controlled Substances Act (21 U.S.C. 849);

''(G) subsection (a) or (b) of section 418 of the Controlled Substances Act (21 U.S.C. 859);

''(H) subsection (a), (b), or (c) of section 419 of the Controlled Substances Act (21 U.S.C. 860);

''(I) section 420 of the Controlled Substances Act (21 U.S.C. 861);

''(J) section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3));

''(K) section 1010A of the Controlled Substances Import and Export Act (21 U.S.C. 960a);

''(L) section 90103 of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12522);

''(M) section 70503 or 70506 of title 46, United States Code; or

''(N) any attempt, conspiracy or solicitation to commit an offense described in subparagraphs (A) through (M).''; and

(2) in subsection (c), by inserting ''A motion made under this section that was denied after a court determination that a violation described in subsection (a)(2) was not a covered offense shall not be considered a denial after a complete review of the motion on the merits within the meaning of this section.'' after the period at the end of the second sentence.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. NADLER) and the gentleman from Wisconsin (Mr. TIFFANY) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. NADLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on H.R. 5455.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5455, which would clarify that the retroactivity provision of section 404 of the First Step Act of 2018 is available to all offenders who were sentenced for a crack offense before the Fair Sentencing Act of 2010 became effective, including individuals convicted of offenses involving small quantities of crack.

After decades of unfair sentences that swept too broadly, most often applied to low-level dealers and impacted minorities disproportionately, Congress has worked to right some of the wrongs of the misguided war on drugs, often on a bipartisan basis. This legislation continues that important effort.

In 1986, in response to a surge in the use of crack cocaine and several high-profile cocaine-related deaths, Congress passed the Anti-Drug Abuse Act, which created mandatory minimum penalties for drug offenses and introduced a 100–1 sentencing disparity between crack cocaine and powder cocaine offenses.

This meant that a person who distributed 5 grams of crack cocaine received the same 5-year mandatory minimum sentence as a person who distributed 500 grams of powder cocaine, and the person who distributed 50 grams of crack cocaine received the same 10-year mandatory minimum sentence as the person who distributed 5,000 grams of powder cocaine.

It soon became evident that this sentencing disparity had also created a significant racial disparity. Four years after Congress passed the Anti-Drug Abuse Act, the average Federal sentence for African-American defendants was 49 percent higher than the average for White defendants.

In 2010, Congress passed the Fair Sentencing Act, which did not eliminate the disparity but which significantly reduced the ratio from 100–1 to 18–1. Unfortunately, that legislation applied only to pending and future cases, leaving thousands of inmates without a path to petition for relief.

In 2018, the bipartisan First Step Act made the Fair Sentencing Act retroactive if an inmate received ''a sentence for a covered offense,'' as defined in section 404 of the Act, providing a pathway to relief for some but not all individuals affected by the sentencing disparity.

Three years later, after roughly 4,000 motions for sentence reductions had been granted, the Supreme Court, in Terry v. United States, limited the availability of sentence reductions under the Fair Sentencing Act, contrary to the intent of Congress.

Based on a narrow reading of the meaning of ''covered offense,'' the Court held that individuals convicted of crack offenses are only eligible for a sentence reduction under the First Step Act if their convictions triggered mandatory minimum penalties.

That means that individuals like Mr. Terry, who possessed less than 4 grams

of crack, are unable to seek sentence reductions, while individuals convicted of sentences involving much larger quantities of crack can seek a sentence reduction, and many have already done so, which is simply absurd and unfair.

The First Step Act was meant to make retroactive sentencing relief available to all individuals sentenced for crack cocaine offenses before the Fair Sentencing Act of 2010 took effect.

As Justice Sotomayor's concurring opinion in Terry reminds us, Congress has numerous tools to correct this injustice, and H.R. 5455, the Terry Technical Correction Act, is one of these tools.

The bill provides a new, expanded definition of ''covered offense'' that includes a list of drug offenses in the criminal code that do not trigger mandatory minimum sentences.

The bill also ensures that no person seeking a sentencing reduction under section 404 will be barred from filing a new petition on the grounds that a judge had previously denied relief based on a determination that the offense of conviction was not a ''covered offense'' under the meaning provided in the First Step Act.

I thank Crime Subcommittee Chairwoman JACKSON LEE, Representatives CICILLINE, JEFFRIES, OWENS, MASSIE, and Delegate HOLMES NORTON for introducing this important bipartisan bill. I urge all of my colleagues to support it, and I reserve the balance of my time.

Mr. TIFFANY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5455 responds to a Supreme Court ruling that held certain low-level drug offenders do not qualify for resentencing under the retroactive provisions of the First Step Act. That was not Congress' intent in adopting the First Step Act.

This problem dates back to the drug epidemic of the 1980s. At that time, Congress enacted harsh penalties for Federal drug offenses, including mandatory minimum sentences.

The Anti-Drug Abuse Act of 1986 created a 100–1 sentencing disparity between crack and powder cocaine, meaning an individual convicted of selling 5 grams of crack cocaine would receive the same sentence as someone convicted of selling 500 grams of powder cocaine.

In 2010, Congress passed the Fair Sentencing Act, which reduced the sentencing disparity between crack and powder from 100–1 to 18–1.

In 2018, Congress passed, and President Trump signed, the First Step Act into law. The First Step Act made the sentencing disparity provision retroactive, allowing individuals convicted of or sentenced for Federal drug offenses related to cocaine to move for a resentencing.

However, that law did not specifically address individuals whose crimes did not trigger the mandatory minimums. As a result, some of those individuals are serving longer sentences than those whose offenses triggered the mandatory minimums. This legislation today makes technical corrections and brings parity to crack-related offenses.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON LEE), a member of the committee.

Ms. JACKSON LEE. Mr. Speaker, I thank the chairman of the full committee, and I rise in strong support of H.R. 5455, the Terry Technical Correction Act, which has widespread support from really the people who count that deal with these issues day after day, our law enforcement officers and attorneys general across America.

Mr. Speaker, I include for the RECORD a letter from several attorneys general, as well as the Major Cities Chiefs Association.

SEPTEMBER 2, 2021.

Hon. CHUCK SCHUMER,
Senate Majority Leader,
U.S. Senate, Washington, DC.
Hon. NANCY PELOSI,
Washington, DC.
Hon. MITCH MCCONNELL,
Senate Minority Leader,
U.S. Senate, Washington, DC.
Hon. KEVIN MCCARTHY,
Washington, DC.

DEAR LEADER SCHUMER, LEADER MCCONNELL, SPEAKER PELOSI, AND LEADER MCCARTHY: As our jurisdictions' Attorneys General, we are responsible for protecting the health, safety, and well-being of our residents. Although our jurisdictions vary in size, geography, and political composition, we are united in our commitment to an effective criminal justice system that safeguards the communities of our states. To that end, a bipartisan coalition of Attorneys General supported the passage of the First Step Act of 2018—landmark legislation that brought common sense improvements to myriad aspects of the criminal justice system. Central to these reforms was retroactive relief for individuals sentenced under the discredited 100-to-1 crack-to-powder cocaine ratio that Congress abolished in 2010. Following the Supreme Court's recent opinion in Terry v. United States, however, the lowest level crack cocaine offenders remain categorically ineligible for resentencing. We write today to urge Congress to amend the First Step Act, and to clarify that its retroactive relief applies to all individuals sentenced under the prior regime.

Congress enacted the historic First Step Act of 2018 to modernize the criminal justice system, implementing comprehensive reform in areas such as corrections, criminal charging, community re-entry, and beyond. The product of a unique bipartisan consensus, the Act passed with overwhelming support from organizations across the ideological spectrum, including the Heritage Foundation, the American Civil Liberties Union, Freedomworks, the National Urban League, the American Conservative Union, the Public Defender Association, Americans for Prosperity, and the Center for American Progress, among many others. Over three dozen Attorneys General supported the Act as a critical tool for strengthening our criminal justice system and better serving the people of our states.

One of the First Step Act's key pillars was sentencing reform. This reform included Section 404, which provides retroactive relief for individuals sentenced under the discarded 100-to-1 crack cocaine-to-powder-cocaine ratio that Congress repudiated through the Fair Sentencing Act of 2010. That earlier legislation abolished the 100-to-1 ratio going forward, reflecting the overwhelming consensus that treating crack cocaine and powder cocaine radically differently exacerbated racial inequality in the criminal justice system and resulted in unjustly severe sentences for low-level crack cocaine users.

But the Fair Sentencing Act applied only to sentences imposed after the Act's passage. As Senator Cory Booker explained, it left thousands of ''people sitting in jail . . . for selling an amount of drugs equal to the size of a candy bar'' based solely on their sentencing date, underscoring the need, in Senator Mike Lee's words, to apply the law ''equally to all those convicted of cocaine and crack offenses regardless of when they were convicted.'' Congress therefore included Section 404 in the First Step Act, which allowed individuals sentenced under the discarded 100-to-1 ratio to seek discretionary resentencing.

Unfortunately, that critical work remains incomplete. In Terry v. United States, the Supreme Court concluded that while Section 404 clearly authorized certain mid- or high-level crack cocaine offenders to seek resentencing, it did not extend relief to the lowest-level offenders sentenced under the prior regime. Specifically, the Court relied on Section 404's definition of a covered offense as any ''violation of a Federal criminal statute, the statutory penalties for which were modified by'' the Fair Sentencing Act. The Court reasoned that because the Fair Sentencing Act did not formally change the elements or penalties for the lowest level era offensesg—it merely changed the quantities needed to trigger mid- and high-level charges—the Act failed to modify the ''statutory penalties'' for the lowest category of offenders. As a result, these individuals are now the only ones sentenced under the earlier crack cocaine quantities that remain categorically ineligible for the First Step Act's historic relief.

We urge Congress to close this gap. There is no reason why these individual—and these individuals alone—should continue to serve sentences informed by the now-discredited crack-to-powder ratio. Discretionary relief is unambiguously available to serious dealers and kingpins sentenced under the prior regime; extending Section 404's scope would simply allow individual users and other low-level crack cocaine offenders to have the same opportunity for a second chance. We therefore urge Congress to clarify that Section 404 of the First Step Act extends to all individuals convicted of crack cocaine offenses and sentenced under the 100-to-1 ratio—including the lowest level offenders.

We thank you for your leadership on this important matter.

Sincerely,

Karl A. Racine, District of Columbia Attorney General; Rob Bonta, California Attorney General; William Tong, Connecticut Attorney General; Leevin Taitano Camacho, Guam Attorney General; Tom Miller, Iowa Attorney General; Brian Frosh, Maryland Attorney General; Dana Nessel, Michigan Attorney General; Aaron D. Ford, Nevada Attorney General; Hector Balderas, New Mexico Attorney General; Sean D. Reyes, Utah Attorney General; Phil Weiser, Colorado Attorney General; Kathleen Jennings, Delaware Attorney General; Kwame Raoul, Illinois Attorney General; Aaron M. Frey, Main Attorney General; Maura Healey, Massachusetts Attorney General; Keith Ellison, Minnesota Attorney General; Andrew Buck, Acting New Jersey Attorney General; Letitia James, New York Attorney General; Ellen F. Rosenblum, Oregon Attorney General; Peter F. Neronha, Rhode Island Attorney General; Mark R. Herring, Virginia Attorney General; Joshua L. Kaul, Wisconsin Attorney General;

Josh Shapiro, Pennsylvania Attorney General; T.J. Donovan, Vermont Attorney General; Robert W. Ferguson, Washington Attorney General.

MAJOR CITIES CHIEFS ASSOCIATION,
October 20, 2021.

Hon. DICK DURBIN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. CORY BOOKER,
U.S. Senate, Washington, DC.
Hon. CHUCK GRASSLEY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. MIKE LEE,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN DURBIN, RANKING MEMBER GRASSLEY, SENATOR BOOKER, AND SENATOR LEE: I write on behalf of the Major Cities Chiefs Association (MCCA) to register our support for S. 2914, the Terry Technical Corrections Act. The MCCA is a professional organization of police executives representing the largest cities in the United States and Canada.

In 2010, Congress reduced the federal sentencing disparity for crack versus powder cocaine offenses. However, due to an unclear definition in statute, the Supreme Court recently held in Terry v. United States that individuals convicted of some of the least serious crack cocaine offenses are ineligible to be resentenced under the reduced disparity. The Terry Technical Corrections Ad will address this issue by clarifying that all offenders sentenced for a crack cocaine offense before the disparity was reduced are eligible to be resentenced. While the MCCA believes Congress should eliminate the federal sentencing disparity, until that happens, this legislation will help address inequities in our criminal justice system related to sentencing for crack cocaine offenses.

Thank you for your leadership on this important issue. Please do not hesitate to contact me if the MCCA can be of any additional assistance.

Sincerely,

CHIEF JERI WILLIAMS,
Chief, Phoenix Police Department, President, Major Cities Chiefs Association.

Ms. JACKSON LEE. As Justice Thomas noted in his opinion in Terry v. United States, citing my introduction of H.R. 4545, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007, I have long worked to address the sentencing disparity between crack cocaine and powder cocaine offenses, introducing legislation to eliminate the disparity completely.

Mr. Speaker, I include this opinion that cites this legislation, among others, for the RECORD.

141 S.Ct. 1858

Supreme Court of the United States

Tarahrick TERRY, Petitioner

v.

UNITED STATES

No. 20–5904

Argued May 4, 2021

Decided June 14, 2021

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C.J., and BREYER, ALITO, KAGAN, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in part and concurring in the judgment.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Attorneys and Law Firms

Elizabeth B. Prelogar, Acting Solicitor General, Counsel of Record, Department of Justice, Washington, DC, for Respondent.

Opinion

Justice THOMAS delivered the opinion of the Court.

In 1986, Congress established mandatory-minimum penalties for cocaine offenses. If the quantity of cocaine involved in an offense exceeded a minimum threshold, then courts were required to impose a heightened sentence. Congress set the quantity thresholds far lower for crack offenses than for powder offenses. But it has since narrowed the gap by increasing the thresholds for crack offenses more than fivefold. The First Step Act of 2018, Pub. L. 115–391, 132 Stat. 5194, makes those changes retroactive and gives certain crack offenders an opportunity to receive a reduced sentence. The question here is whether crack offenders who did not trigger a mandatory minimum qualify. They do not.

I

In the mid-1980s, the United States witnessed a steep surge in the use of crack cocaine, and news of high-profile, cocaine-related deaths permeated the media. Witnesses before Congress, and Members of Congress themselves, believed that a ''crack epidemic'' was also fueling a crime wave. Crack, they said, was far more addictive and dangerous than powder cocaine; it was cheaper and thus easier to obtain; and these and other factors spurred violent crime.

In response to these concerns, Congress quickly passed a bill with near unanimity. The new law created mandatory-minimum penalties for various drug offenses, and it set much lower trigger thresholds for crack offenses. The Act included two base penalties that depended on drug quantity: a 5-year mandatory minimum (triggered by 5 grams of crack or 500 grams of powder) and a 10-year mandatory minimum (triggered by 50 grams of crack or 5 kilograms of powder). 100 Stat. 3207–2, 3207–3. The Act also created a third penalty—possession with intent to distribute an unspecified amount of a schedule I or II drug—that did not treat crack and powder offenses differently, did not depend on drug quantity, and did not include a mandatory minimum.

Petitioner was convicted under this Act and subjected to the third penalty. In exchange for the Government dropping two firearm charges, petitioner pleaded guilty in 2008 to possession with intent to distribute an unspecified amount of crack. At sentencing, the District Court determined that his offense involved about 4 grams of crack, a schedule II drug.

It also determined that petitioner was a career offender under the Sentencing Guidelines. The career-offender Guidelines controlled because they recommended a higher sentence than the drug-quantity Guidelines. The District Court sentenced petitioner to 188 months, the bottom of the career-offender Guidelines range.

All this occurred while Congress was considering whether to change the quantity thresholds for crack penalties. In 1995, the Sentencing Commission issued a report to Congress stating that it thought the 100-to-1 ratio was too high. In particular, it stressed that the then-mandatory Guidelines helped make the ratio excessive because the Guidelines, which were not yet in effect when Congress created the ratio, addressed some of Congress' concerns about crack. Addressing those concerns through both the ratio and the Guidelines, the Commission said, ''doubly punished'' offenders. United States Sentencing Commission, Special Report to the Congress: Cocaine and Federal Sentencing Policy 195–197 (Feb. 1995). Separately, although the Commission thought that it was reasonable to conclude that ''crack cocaine poses greater harms to society than does powder cocaine,'' it determined that the ratio overstated the difference in harm. Finally, the Commission noted that persons convicted of crack offenses were disproportionately black, so a ratio that was too high created a ''perception of unfairness'' even though there was no reason to believe ''that racial bias or animus undergirded the initiation of this federal sentencing law.'' Members of Congress responded to this and similar reports. For example, Senators Sessions and Hatch introduced legislation in 2001 to lower the ratio to 20 to 1. S. 1874, 107th Cong., 1st Sess. Representative Jackson-Lee led a similar effort in the House, but would have created a 1-to-1 ratio. H. R. 4545, 110th Cong., 1st Sess. (2007).

Two years after petitioner was sentenced, these attempts to change the ratio came to fruition. In the Fair Sentencing Act of 2010, 124 Stat. 2372, Congress reaffirmed its view that the triggering thresholds should be lower for crack offenses, but it reduced the 100-to-1 ratio to about 18 to 1. It did so by increasing the crack quantity thresholds from 5 grams to 28 for the 5-year mandatory minimum and from 50 grams to 280 for the 10-year mandatory minimum. §2(a), 124 Stat. 2372. These changes did not apply to those who had been sentenced before 2010.

The Sentencing Commission then altered the drug quantity table used to calculate Guidelines ranges. The Commission decreased the recommended sentence for crack offenders to track the statutory change Congress made. It then made the change retroactive, giving previous offenders an opportunity for resentencing. Courts were still constrained, however, by the statutory minimums in place before 2010. Many offenders thus remained sentenced to terms above what the Guidelines recommended. Congress addressed this issue in 2018 by enacting the First Step Act. This law made the 2010 statutory changes retroactive and gave courts authority to reduce the sentences of certain crack offenders.

Petitioner initially sought resentencing under the new, retroactive Guidelines. But because his sentence was based on his recidivism, not his drug quantity, his attempt was unsuccessful. After Congress enacted the First Step Act, petitioner again sought resentencing, this time contending that he falls within the category of crack offenders covered by that Act. The District Court denied his motion, and the Eleventh Circuit affirmed, holding that offenders are eligible for a sentence reduction only if they were convicted of a crack offense that triggered a mandatory minimum. 828 Fed.Appx. 563 (2020) (per curiam). We granted certiorari. 592 U.S.——, 141 S.Ct. 975. 208 L.Ed.2d 511 (2021).

On the day the Government's brief was due, the United States informed the Court that, after the change in administration, it would no longer defend the judgment. Because of the timeline, the Court rescheduled argument, compressed the briefing schedule, and appointed Adam K. Mortara as amicus curiae to argue in support of the judgment. He has ably discharged his responsibilities.

II

An offender is eligible for a sentence reduction under the First Step Act only if he previously received ''a sentence for a covered offense.'' §404(b), 132 Stat. 5222. The Act defines '''covered offense'' as ''a violation of a Federal criminal statute, the statutory penalties for which were modified by'' certain provisions in the Fair Sentencing Act.

§404(a), ibid. Here, ''statutory penalties'' references the entire, integrated phrase ''a violation of a Federal criminal statute.'' And that phrase means ''offense.'' Black's Law Dictionary 1300 (11th ed. 2019) (''A violation of the law''). We thus ask whether the Fair Sentencing Act modified the statutory penalties for petitioner's offense. It did not.

The elements of petitioner's offense are presented by two subsections of 21 U.S.C. §841. Subsection (a) makes it unlawful to knowingly or intentionally possess with intent to distribute any controlled substance. Subsection (b) lists additional facts that, if proved, trigger penalties.

Before 2010, §§841(a) and (b) together defined three crack offenses relevant here. The elements of the first offense were (1) knowing or intentional possession with intent to distribute, (2) crack, of (3) at least 50 grams. §§1841(a), (b)(1)(A)(iii). This subparagraph (A) offense was punishable by 10 years to life, in addition to financial penalties and supervised release. The elements of the second offense were (1) knowing or intentional possession with intent to distribute. (2) crack, of (3) at least 5 grams. §§841(a), (b)(1)(B)(iii). This subparagraph (B) offense was punishable by 5-to-40 years, in addition to financial penalties and supervised release. And the elements of the third offense were (1) knowing or intentional possession with intent to distribute, (2) some unspecified amount of a schedule I or II drug. §§841(a), (b)(1)(C).

Petitioner was convicted of the third offense—subparagraph (C). Before 2010, the statutory penalties for that offense were 0-to-20 years, up to a $1 million fine, or both, and a period of supervised release. After 2010, these statutory penalties remain exactly the same. The Fair Sentencing Act thus did not modify the statutory penalties for petitioner's offense.

Petitioner's offense is starkly different from the offenses that triggered mandatory minimums. The Fair Sentencing Act plainly ''modified'' the ''statutory penalties'' for those. It did so by increasing the triggering quantities from 50 grams to 280 in subparagraph (A) and from 5 grams to 28 in subparagraph (8). Before 2010, a person charged with the original elements of subparagraph (A)—knowing or intentional possession with intent to distribute at least 50 grams of crack—faced a prison range of between 10 years and life. But because the Act increased the trigger quantity under subparagraph (A) to 280 grams, a person charged with those original elements after 2010 is now subject to the more lenient prison range for subparagraph (B): 5-to-40 years. Similarly, the elements of an offense under subparagraph (B) before 2010 were knowing or intentional possession with intent to distribute at least 5 grams of crack. Originally punishable by 5-to-40 years, the offense defined by those elements is now punishable by 0-to-20 years—that is, the penalties under subparagraph (C). The statutory penalties thus changed for all subparagraph (A) and (B) offenders. But no statutory penalty changed for subparagraph (C) offenders. That is hardly surprising because the Fair Sentencing Act addressed ''cocaine sentencing disparity,'' §2, 124 Stat. 2372, and subparagraph (C) had never differentiated between crack and powder offenses.

To avoid this straightforward result, petitioner and the United States offer a sleight of hand. Petitioner says that the phrase ''statutory penalties'' in fact means ''penalty statute.'' The United States similarly asserts that petitioner is eligible for a sentence reduction if the Fair Sentencing Act changed the ''penalty scheme.''

But we will not convert nouns to adjectives and vice versa. As stated above, ''statutory penalties'' references the entire phrase ''a violation of a Federal criminal statute.'' It thus directs our focus to the statutory penalties for petitioner's offense, not the statute or statutory scheme.

Even if the ''penalty statute'' or ''penalty scheme'' were the proper focus, neither was modified for subparagraph (C) offenders. To ''modify'' means ''to change moderately.'' MCI Telecommunications Corp. v. American Telephone & Telegraph Co, 512 U.S. 218, 225, 114 S.Ct. 2223, 129 L.Ed.2d 182 (1994). The Fair Sentencing Act changed nothing in subparagraph (C). The United States notes that prosecutors before 2010 could charge offenders under subparagraph (B) if the offense involved between 5 and 28 grams of crack; now, prosecutors can charge those offenders only under subparagraph (C). But even before 2010, prosecutors could charge those offenders under subparagraph (C) because quantity has never been an element under that subparagraph. See, e.g., United States v. Birt, 966 ; F.3d 257, 259 (CA3 2020) (noting that an offender charged under subparagraph (C) had possessed 186 grams of crack). It also defies common parlance to say that altering a different provision modified subparagraph (C). If Congress abolished the crime of possession with intent to distribute, prosecutors then would have to bring charges under the lesser included offense of simple possession. But nobody would say that abolishing the first offense changed the second.

In light of the clear text, we hold that §2(a) of the Fair Sentencing Act modified the statutory penalties only for subparagraph (A) and (B) crack offenses—that is, the offenses that triggered mandatory-minimum penalties. The judgment of the Court of Appeals is affirmed.

It is so ordered.

Ms. JACKSON LEE. That is why I introduced H.R. 5455, the Terry Technical Correction Act, which reaffirms Congress' intent to provide retroactive sentencing relief to all individuals convicted of crack cocaine offenses before the Fair Sentencing Act of 2010 took effect; and now I support Mr. JEFFRIES' EQUAL Act, which we hope will be on the President's desk.

With the declaration of the war on drugs in the early 1970s began a dramatic rise in the U.S. prison population. In fact, Mr. Speaker, it was teeming over, fueled largely by excessive, unwarranted drug sentences, some for minimal drug sentences and actions, putting particularly young African-American men in incarceration for decades.

The Federal Government played a pivotal role in America's era of mass incarceration. During the 1980s and 1990s, Congress passed several pieces of legislation that moved away from rehabilitation toward excessive punishment.

One such example is the Anti-Drug Abuse Act of 1986, which created mandatory minimum penalties for most drug offenses and established the 100–1 cocaine to crack disparity. We have found that that does not bring down drug use. It does not bring down crime. What brings down crime is an effective rehabilitation system so that law enforcement officers do not have to confront recidivists ever again because we have given them a pathway to enter into society.

As Justice Sotomayor acknowledges in her concurring opinion in Terry, African Americans ''bore the brunt of the disparity.''

Between 1992 and 2006, roughly 80 to 90 percent of those convicted of crack offenses were African American. There were many who sounded the alarm during this time, including the U.S. Sentencing Commission, which repeatedly called upon Congress to revisit the mandatory minimum sentencing structure because of the racial disparities in cocaine versus crack sentencing. Sadly, Congress refused to listen for many years, and they did not see any strong impact on that approach.

Thankfully, Members of Congress, on an increasingly bipartisan manner, have worked hard to reduce the harmful impact of the failed policies of the war on drugs, including putting an end to the crack to powder sentencing disparities.

Those who are supporting us—law enforcement officers, attorneys general—are Republicans and Democrats alike. Through our efforts, we have learned that there is no greater danger to public safety from crack offenders than powder cocaine offenders, and that the 100–1 ratio overstated the relative harmfulness of the two forms of cocaine and diverted Federal resources away from prosecuting the highest level of traffickers.

In 2010, Congress began the process to eradicate the devastating consequences of the poorly conceived war on drugs and the punitive response to the crack epidemic.

We have had circumstances where false warrants were used to enter people's homes under the false premise that they were using drugs. That didn't bring down crime. That didn't help eliminate those who were doing ill to people. That was not the right approach.

The Fair Sentencing Act of 2010 reduced the sentencing disparity to 18–1, and the First Step Act of 2018 made the Fair Sentencing Act retroactive.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. NADLER. Mr. Speaker, I yield an additional 30 seconds to the gentlewoman.

Ms. JACKSON LEE. Mr. Speaker, although the Terry decision bars crack offenders convicted of offenses involving small amounts of crack—like the 3.9 grams of crack that the petitioner possessed—that do not trigger the mandatory minimum penalties, Congress can address this injustice.

H.R. 5455, aptly named the Terry Technical Correction Act, would guarantee the ability to seek a sentence reduction to all individuals who have unfairly lost years of freedom under the unfounded 100–1 disparity, including those whose requests for sentence reduction was previously denied based on the narrow interpretation of the First Step Act.

While I continue to look forward to the day that we will fully eliminate the powder-to-crack disparity, I thank Representatives CICILLINE, JEFFRIES,

OWENS, MASSIE, and Delegate HOLMES NORTON for working with me on this crucial bipartisan piece of legislation.

Mr. Speaker, I ask my colleagues to support this. It is long overdue. I also include for the RECORD a press release from the Maryland Attorney General.

[Press Release from Brian E. Frosh, Maryland Attorney General, Sept. 2, 2021]

ATTORNEY GENERAL FROSH CALLS ON CONGRESS TO CLARIFY FIRST STEP ACT AND APPLY FAIR SENTENCING REFORMS TO LOW-LEVEL DRUG OFFENSES

BALTIMORE, MD.—Attorney General Brian E. Frosh today joined a bipartisan coalition of 25 attorneys general urging Congress to amend the First Step Act and extend critical resentencing reforms to individuals convicted of the lowest-level crack cocaine offenses.

The coalition is calling on legislators to take this needed step in the wake of the Supreme Court's recent decision in *Terry v. United States*, which held that certain mid-level and high-level crack cocaine offenders could seek resentencing under the law, but low-level offenders were not eligible.

''The intent of the First Step Act was to correct disproportionately harsh sentencing. Ironically, the does not apply to low-level offenders,'' said Attorney General Frosh. ''Congress needs to fix this oversight and ensure that the law provides relief to those who committed lower-level crimes and were subject to inequitable sentencing.''

The First Step Act, a landmark criminal justice reform law, passed Congress with strong bipartisan support in 2018. One key reform aimed to correct injustices caused by the earlier crack cocaine vs. powder cocaine sentencing regime. That now-discredited regime punished users and dealers of crack cocaine much more harshly than users and dealers of powder cocaine, which disproportionately harmed communities of color.

In 2010, Congress passed the Fair Sentencing Act to reduce the disparity between sentences for crack cocaine and powder cocaine. However, the law did not help the many people sentenced for crack cocaine offenses before 2010 who remained in prison. The First Step Act then included a provision that made previous drug sentencing reforms retroactive, allowing those serving harsh sentences imposed under the former federal law to seek relief.

U.S. Senators Richard J. Durbin, Charles E. Grassley, Cory A. Booker, and Mike Lee—the drafters of the First Step Act—confirmed in an *amicus* brief that the sentencing relief was intended to apply to all crack cocaine offenders sentenced before 2010. Nevertheless, in *Terry v. United States*, the Supreme Court concluded that while the First Step Act clearly authorized certain mid- or high-level crack cocaine offenders to seek resentencing, it failed to extend relief to the lowest-level offenders.

In today's letter, the attorneys general urge Congress to close that gap and clarify that the sentencing relief provided by the First Step Act extends to all individuals convicted of crack cocaine offenses under the earlier regime, including the lowest-level offenders. They argue that there is no reason that only these low-level offenders should continue to serve sentences informed by now-discredited standards, and that they should have an opportunity to seek a second chance.

Attorney General Frosh is joined in the letter by the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Guam, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, and Wisconsin.

Mr. Speaker, I rise in support of H.R. 5455, the ''Terry Technical Correction Act.''

As Justice Thomas noted in his opinion in Terry v. United States, citing my introduction of H.R. 4545, the ''Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007,'' I have long worked to address the sentencing disparity between crack cocaine and powder cocaine offenses—introducing legislation to eliminate the disparity completely.

That is why I introduced H.R. 5455, the ''Terry Technical Correction Act''—which reaffirms Congress's intent to provide retroactive sentencing relief to all individuals convicted of crack cocaine offenses before the Fair Sentencing Act of 2010 took effect.

With the declaration of the ''War on Drugs'' in the early 1970's began a dramatic rise in the U.S. prison population—fueled largely by excessive, unwarranted drug sentences.

The federal government played a pivotal role in America's era of mass incarceration. During the 1980s and 1990s, Congress passed several pieces of legislation that moved away from rehabilitation toward excessive punishment.

One such example is the Anti-Drug Abuse Act of 1986, which created mandatory minimum penalties for most drug offenses, and established the 100-to-1, cocaine to crack disparity.

And, as Justice Sotomayor acknowledges in her concurring opinion in Terry, African Americans ''bore the brunt of the disparity.''

Between 1992 and 2006, roughly 80 to 90 percent of those convicted of crack offenses were African American.

There were many who sounded the alarm during this time, including the U.S. Sentencing Commission, which repeatedly called upon Congress to revisit the mandatory minimum sentencing structure because of the racial disparities in cocaine versus crack sentencing. Sadly, Congress refused to listen for many years.

Thankfully, members of Congress, on an increasingly bipartisan basis have worked hard to reduce the harmful impact of the failed policies of the War on Drugs, including putting an end to the crack to powder sentencing disparity.

Through our efforts, we have learned that there is no greater danger to public safety from crack offenders than powder cocaine offenders, and that the 100-to-1 ratio overstated the relative harmfulness of the two forms of cocaine and diverted federal resources away from prosecuting the highest-level traffickers.

In 2010, Congress began the process to eradicate the devastating consequences of the poorly conceived War on Drugs—and the punitive response to the crack epidemic.

The Fair Sentencing Act of 2010 reduced the sentencing disparity to 18-to-1, and the First Step Act of 2018 made the Fair Sentencing Act retroactive.

Although the Terry decision bars crack offenders convicted of offenses involving small amounts of crack—like the 3.9 grams of crack that the petitioner possessed that do not trigger the mandatory minimum penalties—Congress can correct this injustice.

H.R. 5455, aptly named the ''Terry Technical Correction Act,'' would guarantee the ability to seek a sentence reduction to all individuals who have unfairly lost years of freedom under the unfounded 100 to 1 disparity, including those whose requests for sentence reductions were previously denied based on the narrow interpretation of the First Step Act.

While I continue to look forward to the day that we will fully eliminate the powder to crack disparity, I thank Representatives CICILLINE, JEFFRIES, OWENS, and MASSIE, and Delegate HOLMES NORTON for working with me on this crucial, bipartisan piece of legislation and ask my colleagues on both sides of the aisle to support it.

Mr. TIFFANY. Mr. Speaker, I urge my colleagues to support this bill, and I yield back the balance of my time.

Mr. NADLER. Mr. Speaker, H.R. 5455, the Terry Technical Correction Act, is a straightforward bipartisan bill that advances our efforts to make our criminal justice system more fair. I urge my colleagues to support it, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. NADLER) that the House suspend the rules and pass the bill, H.R. 5455, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BIGGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

□ 1615

CONDEMNING THE USE OF HUNGER AS A WEAPON OF WAR AND RECOGNIZING THE EFFECT OF CONFLICT ON GLOBAL FOOD SECURITY AND FAMINE

Ms. JACOBS of California. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 922) condemning the use of hunger as a weapon of war and recognizing the effect of conflict on global food security and famine, as amended.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 922

Whereas, in 2021, 193,000,000 people experienced crisis levels of food insecurity, with nearly 139,000,000 people living in environments where conflict was the main driver of this crisis, and the COVID–19 pandemic has worsened rising global food insecurity;

Whereas conflict acutely impacts vulnerable populations such as women and children, persons with disabilities, refugees, and internally displaced persons;

Whereas armed conflict's impacts on food security can be direct, such as displacement from land, destruction of livestock grazing areas and fishing grounds, or destruction of food stocks and agricultural assets, or indirect, such as disruptions to food systems, leading to increased food prices, including water and fuel, and the breakdown of a government's ability to enforce regulations or perform its judiciary functions;